

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

AGA Medical Corp.,

Plaintiff,

v.

W. L. Gore & Associates, Inc.,

Defendant.

No. 0:10-cv-03734-JNE-JSM

**DECLARATION OF TARA C. NORGARD IN SUPPORT
OF AGA’S OPPOSITION TO GORE’S MOTION TO EXCLUDE THE EXPERT
REPORT AND OPINIONS OF DR. TIMOTHY J. NANTELL**

I, Tara C. Norgard, hereby declare as follows:

1. I am an attorney with the law firm of Carlson, Caspers, Vandenburg, Lindquist & Schuman, P.A., counsel for plaintiff AGA Medical Corporation (“AGA”) in the above-captioned matter. This declaration is submitted on behalf of AGA in support of its Opposition to Gore’s Motion to Exclude the Expert Report and Opinions of Dr. Timothy J. Nantell. This declaration is made on my own personal knowledge, except as otherwise indicated.

2. Attached hereto as **Exhibit 1** is a true and correct copy of United States Patent No. 5,944,738 (“the ‘738 patent”).

3. Attached hereto as **Exhibit 2** is a true and correct copy of the article *New Self-Expanding Patent Foramen Ovale Occlusion Device*, by Young-Min Han, M.D., et al., CATHETERIZATION AND CARDIOVASCULAR INTERVENTIONS 47:370-376 (1999).

4. Attached hereto as **Exhibit 3** is a true and correct copy of Pages 82-89 to the March 12, 2013 deposition transcript of Robert C. Gorman, M.D.

5. Attached hereto as **Exhibit 4** is a true and correct copy of the October 29, 2012 Covenant Not to Sue issued by AGA, which is also filed as Exhibit A to Docket No. 295.

6. Attached hereto as **Exhibit 5** is a true and correct copy of *Septal Defect Closure Device* by Warren Cutright produced as WLG00226338-WLG00226341 marked Plaintiffs' Exhibit 335 (designated as "Confidential-Outside Attorneys' Eyes Only") which is **Filed Under Seal**.

7. Attached hereto as **Exhibit 6** are true and correct copies of Gore HELEX Septal Occluder Training Manual produced as AGA_GORE0442691-AGA_GORE0442762.

8. Attached hereto as **Exhibit 7** is a true and correct copy of Gore HELEX Septal Occluder Images of Conformability produced as WLG00897559-WLG00897562.

9. Attached hereto as **Exhibit 8** is a true and correct copy of the August 15, 2012 deposition transcript of Jake Goble, Ph.D. (designated as "Confidential - Attorneys' Eyes Only"), which is **Filed Under Seal**.

10. Attached hereto as **Exhibit 9** are true and correct copies of *Garretson v. Clark*, 10 F.Cas. 40 (C.C.N.D.N.Y. 1878) (No. 5,248), United States Patent No. 54,860 and United States Patent No. 61,643.

11. Attached hereto as **Exhibit 10** is a true and correct copy of the January 14, 2013 Expert Report of Aimee Armstrong, M.D. (designated as "Confidential – Outside Attorneys' Eyes Only") which is **Filed Under Seal**.

12. Attached hereto as **Exhibit 11** is a true and correct copy of the January 14, 2013 Expert Report of Kaushik Bhattacharya, Ph.D. (designated as "Confidential – Outside Attorneys' Eyes Only") which is **Filed Under Seal**.

13. Attached hereto as **Exhibit 12** is a true and correct copy of the Spring 2008 *Gore HELEX Septal Occluder Closing Remarks* bulletin produced as WL01866469-WL01866474 (designated as “Confidential-Outside Attorneys’ Eyes Only”) which is **Filed Under Seal**.

14. Attached hereto as **Exhibit 13** is a true and correct copy of Gore HELEX Septal Occluder Instructions for Use marked as Plaintiff’s Exhibit 7 to the May 17, 2011 deposition of Mary Mulder.

15. Attached hereto as **Exhibit 14** is a true and correct copy of the article *Results of the U.S. Multicenter Pivotal Study of the HELEX Septal Occluder for Percutaneous Closure of Secundum Atrial Septal Defects* by Thomas K. Jones, et al., JOURNAL OF THE AMERICAN COLLEGE OF CARDIOLOGY 2007; 49; 2215-2222 produced as AGA_GORE0000251-AGA_GORE0000259.

16. Attached hereto as **Exhibit 15** is a true and correct copy of the article *Helex Septal Occluder for Closure of Atrial Septal Defects* by LA Latson, EM Zahn, and N Wilson produced as WL00218265-WL00218271 (designated as “Attorneys’ Eyes Only – Produced Under D. Del. L.R. 26.2”) which is **Filed Under Seal**.

17. Attached hereto as **Exhibit 16** is a true and correct copy of Gore HELEX Septal Occluder Training Manual produced as WL00048719-WL00048789 (designated as “Confidential – Attorneys’ Eyes Only”) which is **Filed Under Seal**.

18. Attached hereto as **Exhibit 17** is a true and correct copy of the brochure “How Does the HELEX Septal Occluder Work?” produced as WL00254022 (designated as “Confidential”) which is **Filed Under Seal**.

19. Attached hereto as **Exhibit 18** is a true and correct copy of Gore HELEX Septal Occluder Pricing Information produced as WLG00492990-WLG00492991 (designated as “Confidential”) which is **Filed Under Seal**.

20. Attached hereto as **Exhibit 19** is a true and correct copy of the March 14, 2013 deposition transcript of Donald A. Gorowsky (designated as “Confidential-Attorneys’ Eyes Only”) which is **Filed Under Seal**.

21. Attached hereto as **Exhibit 20** is a true and correct copy of the February 15, 2013 Expert Rebuttal Report on Damages of Donald A. Gorowsky, CPA, CMA, CFF, JD (designated as “Confidential-Attorneys’ Eyes Only”) which is **Filed Under Seal**.

22. **Exhibit 21** has been intentionally omitted.

23. Attached hereto as **Exhibit 22** is a true and correct copy of the March 1, 2013 deposition transcript of Timothy Nantell (designated as “Outside Attorneys’ Eyes Only”) which is **Filed Under Seal**.

24. Attached hereto as **Exhibit 23** is a true and correct copy of the June 20, 2012 deposition of Warren J. Cutright, DVM (designated as “Confidential-Outside Attorneys’ Eyes Only) which is **Filed Under Seal**.

25. Attached hereto as **Exhibit 24** is a true and correct copy of the May 1999 presentation by LA Latson, EM Zahn, and N Wilson before the British Cardiac Society Meeting produced as WLG00067186-WLG00067189 (designated as “Confidential-Outside Attorneys’ Eyes Only) which is **Filed Under Seal**.

26. Attached hereto as **Exhibit 25** is a true and correct copy of the article abstract “A New Low Profile Nitinol – ePTFE Flexible Double Disc Occlusion Device” by N. Wilsen, L.

Watson and E. Zahn produced as WLG00001754 (designated as “Confidential-Attorneys’ Eyes Only”) which is **Filed Under Seal**.

27. Attached hereto as **Exhibit 26** is a true and correct copy of “Septal Occluders Helex and Eclipse The Evolution of Gore Septal Occluders” by Jake Goble, Ph.D., Peter Zeller, Ph.D., and Ann Bauman, B.D. produced as WLG01680274-WLG01680287 marked Plaintiffs’ Exhibit 351 (designated as “Confidential-Outside Attorneys’ Eyes Only”) which is **Filed Under Seal**.

28. Attached hereto as **Exhibit 27** is a true and correct copy of the March 9, 2013 deposition transcript of Aimee Armstrong, M.D.

29. Attached hereto as **Exhibit 28** is a true and correct copy of Gore HELEX Septal Occluder brochure “Leave Behind the Best” produced as WLG00003276-WLG00003283 (designated as “Confidential-Attorneys’ Eyes Only”) which is **Filed Under Seal**.

30. Attached hereto as **Exhibit 29** is a true and correct copy of Plaintiff AGA Medical Corporation’s Third Set of Interrogatories to Defendant W.L. Gore & Associates (Nos. 19-22), served on August 5, 2011.

31. Attached hereto as **Exhibit 30** is a true and correct copy of Gore’s First Supplemental Objections and Response to AGA’s Third Set of Interrogatories (No. 19), served on January 13, 2012.

32. Attached hereto as **Exhibit 31** is a true and correct copy of Gore HELEX Septal Occluder Training Manual produced as WLG00669881-WLG00669919.

33. Attached hereto as **Exhibit 32** is a true and correct copy of Gore HELEX Septal Occluder Technical Documentation produced as WLG00196501-WLG00196507 (designated as “Confidential-Attorneys’ Eyes Only”) which is **Filed Under Seal**.

34. Attached hereto as **Exhibit 33** is a true and correct copy of Gore NPD Project Assumption Summary produced as WLG01349221-WLG01349229 (designated as “Confidential”) which is **Filed Under Seal**.

35. Attached hereto as **Exhibit 34** is a true and correct copy of Gore HELEX Septal Occluder Pricing Information produced as WLG00492992-WLG00492993 (designated as “Confidential”) which is **Filed Under Seal**.

36. Attached hereto as **Exhibit 35** is a true and correct copy of Gore HELEX Septal Occluder For Transcatheter Closure of Atrial Septal Defects produced as WLG00003394-WLG00003410 (designated as “Confidential-Attorneys’ Eyes Only”) which is **Filed Under Seal**.

37. Attached hereto as **Exhibit 36** is a true and correct copy of an email dated May 2, 2005 to Eric Dufford Subject: Helex Brochure produced as WLG00205760-WLG00205762 (designated as “Confidential-Attorneys’ Eyes Only”) which is **Filed Under Seal**.

38. Attached hereto as **Exhibit 37** is a true and correct copy of a Draft of text to be placed with photos for poster produced as WLG00348049-WLG00348058 (designated as “Confidential-Attorneys’ Eyes Only”) which is **Filed Under Seal**.

39. Attached hereto as **Exhibit 38** is a true and correct copy of an email string dated January 5, 2006 between Alex Javois and Warren Cutright Re: An FDA Request produced as WLG00434774-WLG00434777 (designated as “Confidential-Attorneys’ Eyes Only”) which is **Filed Under Seal**.

40. Attached hereto as **Exhibit 39** is a true and correct copy of an email string dated September 9, 2008 between Tim Rynn, Randy Schulz and others Re: Mock FDA Audit produced

as WLG00458714-WLG00458716 (designated as “Confidential-Outside Attorneys’ Eyes Only”) which is **Filed Under Seal**.

41. Attached hereto as **Exhibit 40** is a true and correct copy of an email string dated April 29, 2008 between Jake Goble, Eric Dufford, John Rhodes and others Re: We have full approval for our study produced as WLG00567989-WLG00567991 (designated as “Confidential-Attorneys’ Eyes Only”) which is **Filed Under Seal**.

42. Attached hereto as **Exhibit 41** is a true and correct copy of Gore Launches New Septal Occluder Device Outside U.S. produced as WLG00647122 (designated as “Confidential-Attorneys’ Eyes Only”) which is **Filed Under Seal**.

43. Attached hereto as **Exhibit 42** is a true and correct copy of HELEX Septal Occluder - A Critical Look at Factors for Success produced as WLG00735333-WLG00735350 (designated as “Confidential-Attorneys’ Eyes Only”) which is **Filed Under Seal**.

I state under penalty of perjury that the foregoing is true and correct.

Dated: May 1, 2013

s/Tara C. Norgard
Tara C. Norgard